



United States Department of the Interior

U.S. Fish and Wildlife Service

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In Reply Refer to:

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22410-2009-FC-0239

August 4, 2009

Memorandum

To: Regional Director, Fish and Wildlife Service, Albuquerque, New Mexico
(ARD-ES)(Attn: Marty Tuegel)

From: Field Supervisor

Subject: Findings and Recommendation on Potential Issuance of a Section 10(a)(1)(A)
Enhancement of Survival Permit for Page Springsnail (TE-174351-0)

I. DESCRIPTION OF PROPOSAL

The Arizona Game and Fish Department (AGFD) has applied to the U.S. Fish and Wildlife Service (FWS) for a section 10(a)(1)(A) Enhancement of Survival Permit (permit) to authorize incidental take of Page springsnails (*Pyrgulopsis morrisoni*) within seeps, springs, canals, and artificial water diversions impoundments on AGFD properties - Bubbling Pond and Page Springs Hatcheries within Yavapai County, Arizona. As a condition of the proposed permit, AGFD would be responsible for implementing a Candidate Conservation Agreement with Assurances (CCAA) which would address the conservation needs of the Page springsnail in central Arizona. The proposed permit, if issued, would not become effective until such time as the Page springsnail may become listed, in accordance with section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), and FWS's Candidate Conservation Agreements with Assurances final rule (64 FR 32726), as amended (64 FR 52676, 69 FR 24084).

Under the CCAA, AGFD would implement conservation measures for the Page springsnail within the covered area through direct management on the Bubbling Ponds and Page Springs Hatcheries. AGFD may also enroll Participating Landowners to implement voluntary conservation measures for the Page springsnail on their properties via Certificates of Inclusion (CIs).

Below is a list of the conservation measures to be undertaken to reduce and/or eliminate threats to the Page springsnail. A complete description of these conservation measures is presented in the CCAA and intra-Service Conference Opinion (22410-2009-FC-0239).

Conservation Measures:

1. Prevent future detrimental habitat modification at known localities.
2. Research.
3. Implement monitoring programs.
4. Evaluate the aquifer supporting Page springsnail habitat.
5. Evaluate, restore, and create habitat.
6. Identify source population(s) and translocate Page springsnails *OR* discover unknown extant populations. This conservation measure is already supported by agency base funding.

II. PUBLIC COMMENT

The notice of availability, receipt of application, request for comments for the draft CCAA for the Page springsnail, and application for an enhancement of survival permit was published in the Federal Register on January 28, 2008 (73 FR 5205). Publication of the notice initiated a 30-day comment period, which closed on February 28, 2008. The Agreement was available on the FWS - Arizona Ecological Services Office website (www.fws.gov/southwest/es/arizona) and by request at the Arizona Ecological Services Office in Phoenix, Arizona. We received one response from the Center for Biological Diversity. They were primarily concerned with the manner in which the draft CCAA addressed the threat of groundwater pumping. We have modified language so the final CCAA is consistent with applicable law and regulation. Groundwater pumping is not a covered action.

III. ISSUANCE CRITERIA-ANALYSIS AND FINDINGS

AGFD has met all application requirements for the Permit. In addition, AGFD has met all issuance criteria for the permit contained in 50 CFR 17.22(d)(1) and 17.32(d)(1). These criteria are detailed below.

Enhancement of Survival Permit

1. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement with Assurances (50 CFR 17.22(d)(2)(i)).

We find that the potential take of Page springsnail would be incidental to otherwise lawful activities. These activities would occur as a result of the AGFD's implementation, and those of Participating Landowners, of the conservation measures described in the CCAA. The permit would include incidental take associated with: implementation of conservation commitments and measures described in the CCAA, and existing land uses, primarily fish hatchery operations, on the enrolled properties. Incidental take authorized under the Permit would be in the form of

harassment, harm, and mortality associated with the conservation activities and documented levels of land use in each participant's CI.

2. The Candidate Conservation Agreement with Assurances complies with the requirements of the Candidate Conservation Agreement with Assurances policy (50 CFR 17.22(d)(2)(ii)).

AGFD has developed the CCAA pursuant to the requirements in the implementing regulations and the issuance criteria for a permit. Conservation benefits for the Page springsnail from implementation of the CCAA are expected in the form of avoidance of negative impacts, reduction of threats, enhancement and restoration of habitat intended to contribute to establishing or augmenting, and maintaining viable populations of Page springsnail. In addition, conservation of Page springsnail would be enhanced by improving and encouraging cooperative management efforts between the AGFD, FWS, and Participating Landowners who own and control Page springsnail habitat.

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of the survival and recovery in the wild of any species (50 CFR 17.22(d)(2)(iii)).

The ESA's legislative history establishes the intent of Congress that this issuance criteria be identical to a regulatory finding of no "jeopardy" under section 7 (a)(2) of the ESA. As a result, potential issuance of this permit was reviewed by the FWS according to provisions of section 7 of the ESA. In the Intra-Service Section 7 Conference Opinion, which is attached hereto, and incorporated herein by reference, the FWS concludes that issuance of a permit will not jeopardize the continued existence of the Page springsnail. No other species will be affected. The taking associated with the implementation of the CCAA will be incidental to efforts associated with changes in land use practices and conservation actions for Page springsnail, and gathering important biological information necessary to continue conservation efforts for the species.

4. Implementation of the terms of the Candidate Conservation Agreement with Assurances is consistent with applicable Federal, State, and Tribal laws and regulations (50 CFR 17.22(d)(2)(iv)).

The FWS is unaware of any law or regulation that would prevent the implementation of the CCAA and the accompanying permit. The permit will include conditions that revoke the take provisions of the Permit if any applicable State, Federal, or tribal law or regulation is broken.

5. Implementation of the terms of the Candidate Conservation Agreement with Assurances will not be in conflict with any ongoing conservation programs for species covered by the permit (50 CFR 17.22(d)(2)(v)).

The CCAA for the Page springsnail furthers ongoing conservation activities for the species' conservation, and is essential in developing a model agreement that can be used to facilitate additional conservation agreements within the historical range of the Page springsnail, particularly with the National Park Service.

6. The Applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement with Assurances.

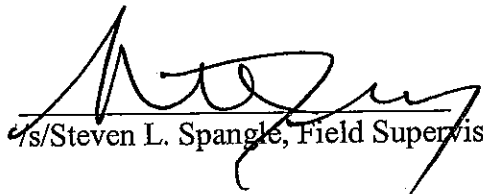
AGFD has shown their ability through participation in ongoing conservation of Page springsnail, such as fencing habitats and conducting surveys. The agency is committed to and can administer the CCAA and work effectively with private landowners to implement conservation commitments in the CCAA. Based on conservation measures described in the CCAA and provisions of the permit, FWS does not expect any unforeseen circumstances to occur that would preclude the AGFD's funding and implementation of the CCAA. The funding for implementation will come from several sources and is expected to be in place prior to implementation. All assurances and the permit coverage is based upon the proper implementation of the CCAA.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS – ANALYSIS AND FINDINGS

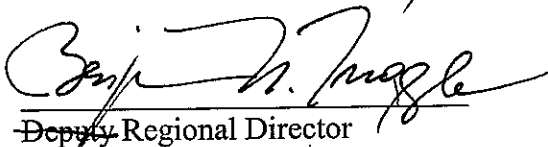
We have no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21 (b)-(c). AGFD has met the criteria for the issuance of the permit and does not have any disqualifying factor that would prevent the permit from being issued under current regulations.

V. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, we recommend issuance of a permit to authorize incidental take of Page springsnail in accordance with the CCAA.


 /s/Steven L. Spangle, Field Supervisor

8/4/2009
 Date


 Deputy Regional Director

10/7/09
 Date